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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,773	10/22/2003	Guilhem Rousselet	LOREAL 3.0-036	6962
530 7590 09/13/2007 LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			EXAMINER RUNNING, RACHEL A	
			ART UNIT 3732	PAPER NUMBER
			MAIL DATE 09/13/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/690,773

Applicant(s)

ROUSSELET, GUILHEM

Examiner

Rachel A. Running

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,5,8,10-13,15,16 and 19-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5,8,10-13,15,16 and 19-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 27, 2007 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 2, 4, 5, 8, 10, 11, and 26-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Poupitch (US 3,924,738) in view of Pezzoli et al. (US 5,191,975).

Poupitch discloses a device comprising a first element (18) detachably securable to a first item (20) and a second item (see Figure 4; column 2, lines 55-65). A second element (18) is detachably securable to the first item and the second item (see Figure 4). A connecting member (28) interconnects the first element and the second element between a relaxed configuration in which the first element and the second element are

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substantially coplanar and a folded configuration in which the first element is coaxially aligned with the second element (see Figures 2 and 3). The device is formed from a moldable thermoplastic material (column 1, lines 53-55). Poupitch does not disclose the first and second element having a pair of arms having free ends the pair of arms being resiliently displaceable relative to one another (claim 1), the free ends of the pair of arms of the first element are spaced apart by a first distance in a nonuse condition in which the first element is not engaged with the first item or the second item the first distance being less than the cross-sectional sizes of the first item and the second item (claim 2), the pair of deformable arms form a portion of a circle and the pair of deformable arms extend more than 180 degrees from one another as measured from the connecting element opposite the open ends (claim 4), the pair of deformable arms extend between 190-310 degrees from one another as measured from said connecting element opposite said open ends (claim 5), the second item is an accessory for the application of the first item (claim 33), the second product is different from the first product (claim 34), and the first product is make-up for the lips or eyelashes and the second product is a product that modifies the appearance of the first product (claim 28).

Pezzoli et al. teach a first element with a first open end (56) having a first length and a second element having a second open end (56) having a second length, the first and second open ends are flexible (see Figure 1; column 4, lines 5-10). The first and second open ends include a pair of deformable arms (32) (see Figure 1). The pair of deformable arms forms a portion of a circle and extends more than 190-310 degrees from one another as measured from the connecting element opposite the open ends

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(see Figure 1). The free ends of the pair of arms of the first element are spaced apart by a first distance in a nonuse condition in which the first element is not engaged with the first item or the second item the first distance being less than the cross-sectional sizes of the first item and the second item (column 6, lines 25-30). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the first element and second element of Poupitch be a pair of deformable arms as taught by Pezzoli et al. in order to facilitate securing the first and second items in the first and second elements. It further would have been obvious to one having ordinary skill in the art at the time the invention was made to have the first product be make-up for the lips or eyelashes and the second product be a product that modifies the appearance of the first product wherein the first product is different from the second product, since Poupitch does not specify what product is to be used with the containers, therefore, one having ordinary skill in the art would determine that any product desired by the user can be placed in the containers such as eye or lip make-up and eye or lip modifier.

4. Claims 12, 13, 15, 16, and 19-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Poupitch (US 3,924,738) in view of Edwards (US 2,949,204) and Pezzoli et al. (US 5,191,975).

Poupitch discloses the claimed invention except for the first and second element having a pair of arms having free ends the pair of arms being resiliently displaceable

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relative to one another and the connecting member being foldable in a first direction so that the first surface of the first surface of the first element confronts the first surface of the second element and foldable in a second direction so that the second surface of the first element confronts the second surface of the second element (claim 12), the free ends of the pair of arms of the first element are spaced apart by a first distance in a nonuse condition in which the first element is not engaged with the first item or the second item the first distance being less than the cross-sectional sizes of the first item and the second item (claim 13), the pair of deformable arms form a portion of a circle and the pair of deformable arms extend more than 180 degrees from one another as measured from the connecting element opposite the open ends (claim 15), and the pair of deformable arms extend between 190-310 degrees from one another as measured from said connecting element opposite said open ends (claim 16).

Edwards teaches a connecting element that allows the connecting element (58) to permit the first side of the first element to confront the first side of the second element and the second side of the first element to confront the second side of the second element (see Figures 1-8). Pezzoli et al. teach a first element with a first open end (56) having a first length and a second element having a second open end (56) having a second length, the first and second open ends are flexible (see Figure 1; column 4, lines 5-10). The first and second open ends include a pair of deformable arms (32) (see Figure 1). The pair of deformable arms forms a portion of a circle and extends more than 190-310 degrees from one another as measured from the connecting element opposite the open ends (see Figure 1). The free ends of the pair of arms of the first

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element are spaced apart by a first distance in a nonuse condition in which the first element is not engaged with the first item or the second item the first distance being less than the cross-sectional sizes of the first item and the second item (column 6, lines 25-30). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the connecting element of Poupitch with a completely flexible element as taught by Edwards to allow the user the ability to pick up the device at the flexible element using their fingers. It further would have been obvious to one having ordinary skill in the art at the time the invention was made to have the first element and second element of Poupitch be a pair of deformable arms as taught by Pezzoli et al. in order to facilitate securing the first and second items in the first and second elements.

Response to Arguments

5. Applicant's arguments filed June 26, 2007 have been fully considered but they are not persuasive.

6. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a

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reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971):

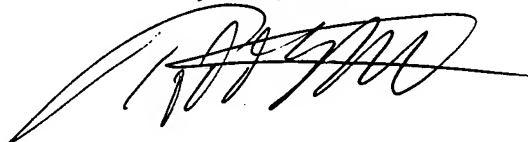
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rachel A. Running whose telephone number is (571) 272-1917. The examiner can normally be reached on Monday-Friday 7:00 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Todd E. Manahan
Primary Examiner



Rachel A. Running
Examiner
Art Unit 3732

